

APPENDIX A

SCOPING FOR THE NATIONWIDE PERMIT PEIS

Council on Environmental Quality regulations (40CFR 1501.7) state: *There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping.* The lead agency is to determine the scope and the significant issues to be analyzed in depth in the environmental impact statement.

This appendix documents the scoping process conducted for this Nationwide Permit PEIS. In March 1999, the Corps announced its intent to prepare a PEIS for the entire nationwide permit program and initiated a formal scoping process to solicit input on issues, concerns, and opportunities for the Program from the public, local, state, and Federal agencies, and other organizations. The Notice of Intent indicated that the intent of the PEIS was to evaluate the procedures and process associated with the nationwide permit program, but not to examine impacts associated with individual nationwide permit authorizations.

This appendix describes major issues identified in discussion with Corps staff, other agencies, voiced in scoping meetings, and submitted in comment letters. The first section summarizes comments made by the public, other agencies, and other organizations at four scoping meetings. The second section describes formal comments submitted by the public, other agencies and other organizations in response to a Federal Register Notice (March 9, 1999). The Federal Register Notice, dated March 22, 1999 is provided in the third section of this appendix.

A.1 Public Scoping Meetings.

This discussion summarizes the public comments received during a series of four scoping meetings held during May 1999. Scoping meetings were held in Sacramento, California (two meetings), Fort Worth, Texas, and Washington DC. Thirty-three individuals (not including Corps staff) attended the meetings. Attendance was as follows: eight at two meetings in Sacramento, seven at one meeting in Fort Worth (there was no attendance for an evening meeting); and (3) eighteen at one meeting in Washington, DC).

These scoping meetings used a workshop format in which participants discussed a series of issues related to the study scope and methodology, and the alternatives to be evaluated in the PEIS.

At three of the four meetings, the number of participants was small enough that the topics were discussed in a single discussion group. In Washington DC the audience was broken into several small discussion groups, with each small group reporting back to the larger group.

Issue 1: Should the PEIS consider and evaluate all nationwide permits equally, or should the PEIS focus on certain nationwide permits because they have more environmental impact?

From the comments received, it is clear that many in the regulated community believe that there should be some prioritizing or categorizing of the nationwide permits. Most comments of this sort suggested that the Corps look at the nature of the activity and how much impact it was really having. Another suggestion was that the Corps analyze which permits generated the greatest workload and which permits generated the greatest controversy. Some outside the regulated community argued that there needed to be consideration of the function and value of the resource being affected, not just the activity. They also observed that cumulative impacts may be more than minimal for even those activities that appear on the face to be minor, especially if in the same geographic area. The suggestion was made that the categorization should consider both the activity and the function/value of the resources using a matrix with activity on one axis and function/value on the other.

Issue 2: Should all resources be considered equally? Are some resources more important biologically and should the PEIS focus on these resources? Should some resources be studied in greater depth because they can serve as indicators of what is happening biologically within a certain area or region?

Some commenters were not comfortable with the idea that the PEIS should make value judgments about which resources are more important. They believe importance should be based upon the function and value of the resource, not the activity covered in the permit. There just isn't enough scientific evidence to make the argument that one type of resource is more important than another.

Another suggestion was that the study team should consider a good balance of higher/mid/lower impact permits so that the PEIS results would not be skewed.

The comment was made that isolated wetlands are of particular importance from an environmental perspective. The new requirements in the replacement permits also make wetlands in 100-year floodplains particularly important.

Issue 3: What types of impacts should the PEIS evaluate? What are the best methods for evaluating the impacts? What data sources are available to conduct the evaluation?

Impacts:

There were a number of comments made that the Corps should assess the economic costs of protracted regulatory processes. In addition to the actual costs of the regulatory process, a major cost to the regulated community is in delays (opportunity costs). There can also be public safety costs if public works projects such as bridges are delayed due to the regulatory process.

One of the issues of concern in all the workshops was how the Corps was going to account for the impacts of the non-reporting activities permitted by the nationwide permits. Because they are

non-reporting, the Corps does not have data on the amount and impacts of these activities. The suggestion was made that state agencies may have data that can be used to make comparisons that will allow the Corps to estimate the magnitude of unreported activities. It is important to assess the impacts of non-reported as well as unauthorized activities because they may be resulting in impacts upon endangered species.

The PEIS needs to assess cumulative impacts. Commenters stated that cumulative wetlands impacts are often greater than the sum of individual project impacts. The suggestion was made that the PEIS should assess cumulative impacts on the basis of criteria (such as types of wetlands, types of mitigation, types of projects, types of development, etc.), not just broad, qualitative judgments.

Some suggested the PEIS consider the beneficial effects of wetlands mitigation. Several participants questioned whether the Corps is adequately tracking the amount of actual mitigation that is occurring. Others pointed out that the only way the public can access information about mitigation is on a permit-by-permit basis, and there needs to be some way the public can see the total impact of the program.

Some suggested the PEIS examine the relationship between impact size or extent and the degree of environmental impact. Some indicated that state studies suggest that the greatest amount of impact is coming from smaller projects.

The PEIS should examine impacts in terms of immediate, short-term, and long-term nature of the impacts.

The PEIS should evaluate Corps manpower and resource requirements for each of the alternatives considered. It should not just assume the present staffing as a constraint, but should simply estimate the staffing that would be required in each of the alternatives.

The PEIS should consider environmental impacts resulting from the NWP's and distinguish or isolate those impacts that are caused by or result from other activities and sources of adverse environmental impacts.

Measures and Methods

The concern was expressed that purely quantitative data, such as the number of acres impacted, do not fully measure the quality of a resource. The measures need to take into account the function and value of the resource. Even quantitative measures need to consider such measurable criteria as the flood storage value of a wetland or the volume of the fill (not just the acreage covered).

Several workshop participants suggested that the Hydrogeomorphic Approach (HGM) might be useful for impact evaluation. However, others suggested that available data and methods will not allow rigorous quantitative examination of functions and values.

Case studies were suggested to show what actually occurs during the permitting process. This would allow the Corps to test assumptions about what is happening with actual experience at the field level.

Data Sources:

The most frequently mentioned data sources were the state regulatory and natural resource agencies and other federal agencies. The regulated community and environmental groups may also have important data.

There were a number of concerns expressed about whether the Corps information systems were storing the kind of data that is needed to make assessments of the nationwide program. Some people believe that the RAMS system needs to be modified to get and store better data.

Issue 4: What is the most appropriate geographic scale of analysis for evaluating environmental, economic and social impacts in the PEIS? Should the PEIS evaluate impacts on a national, regional or some other scale?

Many workshop participants maintain that the PEIS analysis needs to be based on geographic areas containing similar resources. Desert states, for example, might be combined in the same unit. They indicated that it makes little sense to compare wetlands in the Southeast with vernal pools in the arid West. The basis for establishing the regions should be ecological, e.g., ecoregions. Several suggested that the PEIS analysis needs to proceed from the smallest unit (watershed) upward and that a watershed scale will enable the Corps to analyze cumulative impacts.

Issue 5: What baseline should be used to evaluate and compare the alternatives?

Some seemed to support the no nationwide permit program and/or all individual permits conditions as a baseline reference point for alternative comparison. Some suggested the no nationwide permit program could be defined as the regulatory program in 1977.

More participants supported use of the existing program as an appropriate baseline.

Issue 6: What alternatives should the PEIS consider and evaluate?

Note: Groups were asked to develop three alternatives: (1) an alternative that would best protect the nation's aquatic resources; (2) an alternative that produces the most efficient decision-making process (in terms of time, cost to applicant, legally required public review); and (3) an alternative that best makes economic and social impacts its primary concern. Consider alternative processes and procedures in addition to programmatic alternatives.

Some of the general comments received were:

- The value-based alternatives asked by the exercise could produce unreasonable alternatives. Criteria need to be used to identify which alternatives are reasonable and should be carried through the entire PEIS evaluation process.
- Study alternatives should not assume the Corps current budget and staff resources are a permanent constraint
- The PEIS should include and consider alternatives that may require Congressional action
- The Corps should develop or consider a level of impact for which no permit would be required. Recent changes to the nationwide permits require a pre-construction notification even though the impacts are minor
- Previous nationwide permit programs (1977, 1986, 1991) represent alternatives to be considered in the PEIS.
- The PEIS needs to identify alternatives that simplify the nationwide permit program. Districts should continue to determine minimal impact standards.
- The PEIS should identify projects/activities that do not require permits
- One alternative would be to get rid of the preconstruction notification requirements for all nationwide permits.

One discussion group identified the alternatives shown below, without identifying which alternative best matched the values shown in the questions above:

- Alternative 1: The nationwide permit program with the proposed 1998 nationwide permit replacements
- Alternative 2: Prohibition of all work in the Waters of the U.S.
- Alternative 3: No nationwide permits, but with various combinations of state programmatic permits, regional permits, and letters of permission
- Alternative 4: An all individual permits program
- Alternative 5: State 404 assumption

Other groups suggested alternatives that would meet the various objectives as follows.

The alternative that would best protect the nation's aquatic resources

Many suggested that an "all individual permits" program probably would do the best job of protecting aquatic resources. The individual permit process should result in high scrutiny of proposed projects and their impacts, resulting in better protection.

Other potential alternatives suggested included:

- A nationwide permit program with a more restrictive minimum impact threshold and without a preconstruction notification requirement for all the activities with impacts less than the stated threshold
- Regional Denials (e.g. certain resource exclusions) along with regional permits
- Nationwide permits limited to certain resources
- Alternatives with more effective mitigation measures and more Corps resources to oversee mitigation
- No discharges into wetlands or other waters
- The existing nationwide permit program, but with a very careful job of identifying minimal-effect activities
- State programmatic permits or regional general permits based on the size of the impacts (and the belief that the states know the resources better)
- States identify protected (i.e., “no-touch”) wetlands

The alternative that produces the most efficient decision-making process (in terms of time, cost to applicant, legally required public review)

The comment was made that there are different perspectives for assessing efficiency. There is efficiency for the Corps, efficiency for the applicant, and efficiency for other agencies

Suggestions for an “economically efficient” alternative included:

- The key issue for efficiency is certainty. Examples of steps to increase certainty include:
 - The Corps needs a well-developed assessment technique, so there is agreement on what is valuable and what is not
 - Set up a program so that applicants can just pay dollars for mitigation and there is a well-defined program in place to ensure those dollars actually produce the expected mitigation
 - Have formally defined mitigation ratios, regionally-based
 - Have a well-defined and developed planning framework, instead of the existing permit-by-permit approach, e.g. Special Area Management Plans (SAMPs)

- Set up Memorandums of Understanding between or among federal agencies so that applicants don't get trapped between two sets of standards
- Alternatives with some form of nationwide permits would be appropriate for this type of alternative, since they are considerably easier and less expensive for the applicant. The 404(b)(1) alternatives analysis is very difficult to do and expensive for the applicant.
- One alternative could consider or include changes to the 404(b)(1) Guidelines to eliminate the sequencing requirement -- consider mitigation at the same time, not afterwards
- Regional general permits for corridor projects (such as pipeline, power lines, etc.) involving multiple jurisdictions
- An alternative with application protocol that requests different levels of information based on the regulatory need and the sophistication of the applicant, and gets all the needed information up-front
- Early consultation
- States identify "no-touch" wetlands (this could be specific wetlands, or by type or ecoregions)
- Identify activities or impacts that do not require a permit
- No-notification nationwide permits
- Field permits issuance - give staff the authority to write nationwide permit authorizations in the field for projects that comply with nationwide permit terms and conditions

The alternative that best makes economic and social impacts its primary concern

The suggestions for this type of alternative included:

- Permit analysis procedures with socioeconomic impact analysis equivalent to the present environmental analysis
- General Permits with thresholds of minimal socioeconomic impacts equivalent to the minimal environmental effects
- An "all individual permits" program with socioeconomic impact analysis
- NWPs without PCN

- The 1986 program

This summary was prepared by Dr. James L. Creighton, Creighton & Creighton, Inc., Los Gatos, California., who facilitated three of the four meetings. Dr. Jerry DelliPriscoli (IWR) facilitated the scoping meeting in Fort Worth, Texas .

A.2 Comments in Response to Notice of Intent

The Institute for Water Resources received 38 comment letters regarding the scope of the NWP Programmatic EIS in response to the Notice of Intent federal register notice. The majority of comments were from environmental groups, special interest associations, and federal and state agencies. A few comments were received from private citizens and private businesses.

Source of Comment Letters	Number Comment Letters
Public	2
Federal agency	2
Other agency	5
Private organization	29

Comment letters identified concerns to be addressed in the PEIS. In some instances one comment letter would recommend an issue to be addressed and a second letter would request that the issue not be addressed (i.e. costs to regulated public). The following categories of concerns were identified in descending order of frequency of mention:

Minimal Effects and Cumulative Effects
Alternatives to be evaluated
Mitigation
Functions of lost resources
Existing Data and Data Gaps
Procedures and processing time
Cost to Regulated Public and Federal Government
Watershed Approach
Compliance with NEPA, CWA and other legislation
Use and Effect of Regional Conditions
Other

A.3 Notice of Intent to Prepare NWP PEIS, Federal Register

[Federal Register: March 22, 1999 (Volume 64, Number 54)]
[Notices]
[Page 13782]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr22mr99-55]

DEPARTMENT OF DEFENSE
Department of the Army

Corps of Engineers; Scoping Meetings for Nationwide Permit Program Programmatic
Environmental Impact Statement

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of Intent and request for comments.

SUMMARY: The Corps is initiating a Programmatic Environmental Impact Statement (PEIS) for the entire Nationwide Permit Program (NWP) to be completed by December 2000. The overall purpose of the PEIS is to review and evaluate the NWP program as a whole, to ensure that the NWP program authorizes only those activities with minimal individual and cumulative adverse environmental effects on the aquatic environment. This notice is intended to provide other Federal agencies, States, Tribes and the public the opportunity to participate in the scoping of the PEIS. The Corps will hold three meetings to solicit comments on the scope of the PEIS. Comments may be submitted in person at the meeting or in writing to the address given below.

DATES: Written comments must be submitted on or before June 4, 1999.

The meeting dates are:

1. May 4, 1999, at 1:00-5:00 p.m. and 7:00-10:00 p.m., Sacramento, CA.
2. May 6, 1999, at 1:00-5:00 p.m. and 7:00-10:00 p.m., Fort Worth, TX.
3. May 24, 1999, at 1:00-5:00 p.m., Washington, D.C.

ADDRESSES:

The meeting locations are:

1. Sacramento--Clarion Hotel, 700 Sixteenth Street, Sacramento, CA, 95814
2. Fort Worth (downtown)--Fritz G. Lanham Federal Building (Taylor Street Entrance, 1st floor), 819 Taylor Street, Fort Worth, TX 76102
3. Washington, DC--National Guard Association Building, One Massachusetts Avenue, NW, Washington, DC 20001.

Send written comments to Mr. Robert Brumbaugh, CEWRC-IWR-P, Casey Building, 7701 Telegraph Road, Alexandria, Virginia 22315-3868.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brumbaugh, CEWRC-IWR-P, at (703) 428-6370.

SUPPLEMENTARY INFORMATION: On July 1, 1998, the Corps published a Notice document (63 FR 36040, July 1, 1998) containing a proposal to issue 6 new NWP and modify 6 existing NWPs to replace NWP 26. Further modifications were proposed on October 14, 1998 (63 FR 55095, October 14, 1998) which included withdrawing one of the proposed NWPs, the addition of restrictions on the use of certain NWPs, and extending the NWP process and the expiration of NWP 26 to September 15, 1999. On June 23, 1998, the Corps issued a Finding of No Significant Impact for the NWP program which states that the NWP program does not have significant effects on the quality of the human environment and therefore the preparation of an EIS is not required by NEPA.

Although the Corps determined that an EIS was not required by NEPA, it announced in the July 1, 1998 Notice document (63 FR 36040, July 1, 1998) that it would prepare a PEIS for the entire NWP program. The overall purpose of the PEIS is to review and evaluate the NWP program as a whole, to ensure that the NWP program authorizes only those activities with minimal individual and cumulative adverse effects on the aquatic environment. The PEIS will provide a programmatic comprehensive and structured review of the effects of the NWP program on the environment. The intent of the PEIS is to evaluate the procedures and process associated with the NWP program and not to examine impacts associated with individual NWP authorizations.

Some of the issues to be addressed in the PEIS include the following: programmatic and procedural alternatives to be evaluated; procedures to evaluate and ensure minimal effects; procedures to ensure protection of endangered species and historic and cultural resources; and evaluation and analysis of costs to the regulated public (including administrative, opportunity and delay costs) and benefits to the public (including navigation, water quality, wetlands, and other public interest benefits).

The scoping meeting will focus on identifying programmatic and procedural alternatives (e.g., combination of Regional General Permits and NWPs), methods of collecting and analyzing NWP data, and other substantial environmental issues to be addressed in the PEIS.

The Corps expects to complete preparation of the Draft PEIS by August 2000. The Final PEIS will be completed by December 2000. Public meetings to present preliminary study findings are planned to be held prior to publication of the Draft PEIS.

Dated: March 17, 1999.
Charles M. Hess,
Chief, Operations Division, Directorate of Civil Works.
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